

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 6, 2013

Elisabeth A. Shumaker
Clerk of Court

RAMON L. FISHER,

Plaintiff - Appellant,

v.

ROGER WERHOLTZ^{*}, Interim Executive
Director; TRAVIS TRANI, Warden
CCF/CSP; SEAN FOSTER, Assoc.
Warden CCF/CSP; KELLY WASKO,
Warden, SCCF,

Defendants - Appellees.

No. 13-1173
(D.C. No. 1:12-CV-02766-LTB)

ORDER

Before **LUCERO**, **TYMKOVICH**, and **MATHESON**, Circuit Judges.

We raise *sua sponte* the question of whether this court has jurisdiction to consider this appeal. The timely filing of a notice of appeal is both mandatory and jurisdictional. *Bowles v. Russell*, 551 U.S. 205, 214 (2007). In a civil case in which the United States, its agencies, its officers, or its employees are not a party, the notice of appeal “must be

^{*} On April 16, 2013, Roger Werholtz became Interim Executive Director of the Colorado Department of Corrections. Consequently, his name is substituted for that of Tom Clements, the former Executive Director, in accordance with Fed. R. App. P. 43(c)(2.)

filed with the district clerk within 30 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A). Upon motion, the district court may extend the time to file a notice of appeal; however, an extension of time may not exceed 30 days beyond the time prescribed for filing a notice of appeal, or 14 days after the date the order granting the extension is entered, whichever is later. Fed. R. App. P. 4(a)(5)(C).

Plaintiff Ramon Fisher filed suit against Tom Clements, formerly the Executive Director of the Colorado Department of Corrections, Travis Trani, Warden of the Colorado State Penitentiary and Centennial Correctional Facility, Sean Foster, Associate Warden of the Colorado State Penitentiary and Centennial Correctional Facility, and Kelly Wasko, Warden of the San Carlos Correctional Facility. On February 6, 2013, the district court dismissed the suit pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and entered judgment by separate order. Because the United States was not a party to the suit, Fisher’s notice of appeal was due no later than 30 days after entry of judgment, or March 8, 2013. On March 8, 2013, Fisher filed a timely motion for extension of time to file a notice of appeal. The district court granted the motion and extended the deadline by thirty days, until April 8, 2013. The district court later denied Fisher’s second motion for an extension of time to file a notice of appeal, concluding that it lacked authority to further extend the time to file a notice of appeal.

The district court properly determined that it lacked authority to further extend the time to file a notice of appeal. *See* Fed. R. App. P. 4(a)(5)(C)(an extension of time may not exceed 30 days beyond the time prescribed for filing the notice of appeal). As a

result, Fisher's notice of appeal, filed on April 25, 2013, was untimely. Accordingly, this appeal is dismissed for lack of appellate jurisdiction.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "Jane K. Castro", with a long horizontal flourish extending to the right.

by: Jane K. Castro
Counsel to the Clerk